

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel. W.A. DREW )  
EDMONDSON, in his capacity as ATTORNEY )  
GENERAL OF THE STATE OF OKLAHOMA )  
and OKLAHOMA SECRETARY OF THE )  
ENVIRONMENT C. MILES TROBERT, in his )  
capacity as the TRUSTEE FOR NATURAL )  
RESOURCES FOR THE STATE OF )  
OKLAHOMA, )

Plaintiff,

vs.

TYSON FOODS, INC., INC., TYSON )  
POULTRY, INC., TYSON CHICKEN, INC., )  
COBB- VANTRESS, INC., AVIAGEN, INC., )  
CAL-MAINE FOODS, INC., CAL-MAINE )  
FARMS, INC., CARGILL, INC., CARGILL )  
TURKEY PRODUCTION, LLC, GEORGE'S, )  
INC., GEORGE'S FARMS, INC., PETERSON )  
FARMS, INC., SIMMONS FOODS, INC., and )  
WILLOW BROOK FOODS, INC., )

Defendants.

Case No. 05-CV-329-GKF-SAJ

**OPINION AND ORDER**

Comes on for determination following hearing held on October 6, 2007, Cargill Defendants' Motion to Compel Plaintiffs to Designate Deponents Under Rule 30(b)(6) [Dkt. # 1270];<sup>1</sup> State of Oklahoma's Omnibus Motion Regarding Deficiencies in Defendants' Respective ESI Responses, deemed by the Court to be a Motion to Compel [Dkt. # 1271];

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<sup>1</sup>State of Oklahoma ("Plaintiff/State"), is occasionally referenced in the filings in the plural. The Court will refer to Plaintiff in the singular unless directly citing from a filed pleading. Motion captions are cited as they appear in the filings.

The Cargill Defendants' Motion for Modification of the Scheduling Order [Dkt. #1297]; The Cargill Defendants Motion For Clarification/Reconsideration [Dkt. #1298]; Joinder By Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., and Cobb-Vantress, Inc. in the Cargill Defendants' Motion to Modify the Scheduling Order, deemed by this Court to be a Motion for Joinder [Dkt. #1299]; Defendant Peterson Farms, Inc.'s Joinder in Docket Numbers 1297 and 1299, deemed by the Court to be a Motion for Joinder [Dkt. 1329]; Simmons Foods, Inc. Joinder in Cargill Defendants' Motion For Modification of Scheduling Order, deemed by this Court to be a Motion for Joinder [Dkt. #1348]; Joinder By Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. in Cargill Defendants' Motion For Modification of Scheduling Order, deemed by this Court to be a Motion for Joinder [Dkt. #1349]; Motion to Quash Subpoena For Inspection and Sampling Of Premises Owned by Non-Parties Or Alternatively, Motion for Protective Order [Dkt. #1306]; Non-Parties Motion for Protective Order [Dkt. #1311]; State of Oklahoma's Motion for Protective Order Regarding the Conduct of 30 (b)(6) Depositions of the State [Dkt. #1309]; Peterson Farms Inc.'s Motion for Protective Order Prohibiting Further Ex Parte Communications Between Plaintiffs' Counsel and Kerry Kinyon and Striking Plaintiffs' Request for Production of Documents [Dkt. #1310]; Notice of Advice to the Court , deemed by the Court to be Cargill's Second Motion for Extension of Time to File Supplemental Application Re: Sanction Order Re: Dkt. #1252 [Dkt. # 1324]; and, State of Oklahoma's Motion to Compel the Poultry Growers to Permit Sampling Requested in September 7, 2007 Subpoenas [Dkt. #1334]. The Court, having considered the arguments and authority presented in the filings and at hearing, finds

as follows:<sup>2</sup>

At hearing, Cargill Defendants made oral motion to hold in abeyance Cargill Defendants' Motion to Compel Plaintiffs to Designate Deponents Under Rule 30(b)(6) [Dkt. # 1270] and State of Oklahoma's Motion for Protective Order Regarding the Conduct of 30 (b)(6) Depositions of the State [Dkt. #1309], based upon agreement reached between counsel for all parties. The agreement calls for Cargill Defendants to prepare a proposed plan to coordinate Rule 30 (b)(6) depositions. The plan will address, among other issues, what topics are to be addressed at the depositions and the amount of time to be allotted to each Defendant to question the deponent regarding the issues specific to the claims made against that Defendant. Plaintiff will respond with suggestions and a meet and confer will then be arranged to work out details, as necessary.

The Court finds the motion to hold in abeyance should be granted subject to the following conditions. The parties are directed to file status report on or before November 30, 2007, advising the Court of what progress has been made. The abated motions will be set for hearing on December 6, 2007 to address any unresolved issues. Should all issues be resolved, the parties are to file motions to withdraw the abated motions in lieu of status report.

State of Oklahoma's Omnibus Motion Regarding Deficiencies in Defendants' Respective ESI Responses, deemed by the Court to be a Motion to Compel [Dkt. # 1271] is taken under advisement and will be addressed by separate Order.

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<sup>2</sup>At hearing, argument was taken on motions addressing the same general categories. This Order addresses the motions as chronologically filed. However, motions for joinder are addressed with the motions sought to be joined.

The Cargill Defendants' Motion for Modification of the Scheduling Order [Dkt. #1297] is taken under advisement and will be addressed by separate Order.

Joinder By Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., and Cobb-Vantress, Inc. in the Cargill Defendants' Motion to Modify the Scheduling Order, deemed by this Court to be a Motion for Joinder [Dkt. #1299]; Defendant Peterson Farms, Inc.'s Joinder in Docket Numbers 1297 and 1299, deemed by the Court to be a Motion for Joinder [Dkt. 1329]; Simmons Foods, Inc. Joinder in Cargill Defendants' Motion For Modification of Scheduling Order, deemed by this Court to be a Motion for Joinder [Dkt. #1348]; and, Joinder By Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. in Cargill Defendants' Motion For Modification of Scheduling Order, deemed by this Court to be a Motion for Joinder [Dkt. #1349] are granted. The Court will consider these motions in connection with the Cargill Defendants' Motion for Modification of the Scheduling Order [Dkt. #1297] on which a separate Order will be entered.

The Cargill Defendants Motion For Clarification/Reconsideration [Dkt. #1298] is granted. The motion seeks direction from the Court regarding the geographic scope of the Order entered July 6, 2007. Further, the motion seeks to limit discovery to exclude information on the environmental effects of constituent elements of poultry litter unless the constituent elements are related to the land application of poultry litter.

The Court concludes the geographic scope of the paper discovery should be limited to the United States. This does not preclude Plaintiff from urging the geographic scope should be broadened to include areas outside the United States should the discovery produced compel expansion.

The Court finds the issue of constituent elements is timely and properly raised based upon new evidence of the burdensomeness of the discovery. The Court further finds that the probative value of the discovery sought is outweighed by the cost of production. Defendants' Cargill will therefore not be required to produce discovery regarding the environmental effects of constituent elements outside the context of poultry litter.

Motion to Quash Subpoena For Inspection and Sampling Of Premises Owned by Non-Parties [Dkt. #1306] is denied. Non-Parties Alternative Motion for Protective Order is also denied [Dkt. #1311]. Accordingly, State of Oklahoma's Motion to Compel the Poultry Growers to Permit Sampling Requested in September 7, 2007 Subpoenas [Dkt. #1334] is granted. The parties are to meet and confer as to a schedule for inspection which will be as minimally intrusive as possible.

Peterson Farms Inc.'s Motion for Protective Order Prohibiting Further Ex Parte Communications Between Plaintiffs' Counsel and Kerry Kinyon and Striking Plaintiffs' Request for Production of Documents [Dkt. #1310] is denied as to the issuance of a protective order and granted as to motion to strike the request for production of documents.

Notice of Advice to the Court, deemed by the Court to be Cargill's Second Motion for Extension of Time to File Supplemental Application Re: Sanction Order Re: Dkt. #1252 [Dkt. # 1324] is held in abeyance at the request of Defendants' Cargill and will be addressed at the December 6, 2007 motion hearing.

Cargill Defendants' Motion to Compel Plaintiffs to Designate Deponents Under Rule 30(b)(6) [Dkt. # 1270]; State of Oklahoma's Motion for Protective Order Regarding the Conduct of 30 (b)(6) Depositions of the State [Dkt. #1309]; Peterson Farms, Inc.'s Motion To Compel With Regard to Plaintiffs' Agency Privilege Logs [Dkt. # 1276]; Joinder by Cal-

Maine Foods, Inc. and Cal-Maine Farms, Inc. in Peterson Farms, Inc.'s Motion To Compel With Regard to Plaintiffs' Agency Privilege Logs , deemed by this Court to be a Motion for Joinder [Dkt. #1277]; and Notice of Advice to the Court, deemed by the Court to be Cargill's Second Motion for Extension of Time to File Supplemental Application Re: Sanction Order Re: Dkt. #1252 [Dkt. # 1324] are set for hearing on December 6, 2007 at 9:30 a.m.

IT IS SO ORDERED THIS 14<sup>th</sup> DAY OF NOVEMBER, 2007.

  
Sam A. Joyner  
United States Magistrate Judge